

Transmittal

Section 8 Renewal Policy Guide Book

Issued:

This Transmits:

Page changes to the Section 8 Renewal Policy Guide Book. These changes have done through the Departmental Clearance process.

Explanation of Changes.

All changes have light grey shading to denote what has changed on the page unless a section was completely removed. The major changes are:

1. Establishes in Chapter One that the Section 8 Renewal Guide Book information collection requirements have been approved under the Paperwork Reduction Act of 1995.
2. Removes some confusing language from page 1 of Chapter Two.
3. Corrects a typographical error on page 2 of Chapter Two revised on May 5, 2006.
4. Establishes in Chapter Six that the "lesser of test" is required every time an exception project's Section 8 contract is renewed under option 4.
5. Clarifies in Chapter 7:
 - What constitutes a Portfolio Reengineering Demonstration ("Demo") Program Project and what is required to renew the Section 8 contract;
 - Emphasizes that owner's of Demo projects must use Option 5 when renewing their project-based Section 8 contracts; and
 - That a Demo project is subject to rent comparability study requirements and rents maybe adjusted to the extent that they have risen above or fallen below market.

Filing Instructions:

Remove:	Insert:
Chapter 1 Page 9 Chapter 2 Page 1 Page 2 dated 05-05-2006 Chapter 6 Pages 3, 4, and 5 Chapter 7 Pages 1, 2, and 3 dated 4/11/01	Chapter 1 Page 9 dated 12-12-2006 Chapter 2 Pages 1 and 2 dated 12-12-2006 Chapter 6 Pages 3, 4, and 5 dated 12-12-2006 Chapter 7 Pages 1, 2, and 3 dated 12-12-2006

- H. When a Renewal Contract is executed by a PHA in accordance with the instructions provided in this Guidebook, and in the forms prescribed by HUD, HUD is contractually bound by the Renewal Contract provisions that specify HUD's role in accordance to the Renewal Contract.
- I. Owners must certify on the Option 6 Renewal Form that they will comply with the requirement to allow families receiving enhanced vouchers who elect to remain to do so as long as the property remains a rental property, unless the owner has just cause for eviction.

PAPERWORK REDUCTION ACT.

Section 1-6

The information collection requirements contained in this Guide Book have been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520). An OMB approval number has been assigned. The OMB Control Number is 2502-0533.

Section 8 Renewals

The passage of MAHRA by Congress signaled an important shift in the Section 8 program: Section 8 rents, to the extent possible, must be comparable to unsubsidized rents in the area where the project is located. In some cases, this meant the rents can be adjusted upward. With the establishment of OAHP, formerly known as OMHAR, Congress also clearly recognized that the rents at some Section 8 projects needed to be reduced. To ascertain where a project's Section 8 rents are relative to market rent levels, for most projects MAHRA requires the preparation of a rent comparability study, (RCS).

In order to reduce administrative burden, MAHRA does not require an RCS every year. Instead, beginning with the date of the initial renewal of the expiring Section 8 project-based contract, the RCS will start a maximum five-year "life cycle" before a new RCS is required. (see Chapter Nine for details on the RCS).

Types of Renewals

Section 2-1

- A. Initial Renewals. The first renewal of a project's contract or stage that is processed under the rules established by MAHRA is considered the initial renewal of the contract.
- B. Subsequent Renewals. A subsequent renewal is the renewal of an expiring Section 524 contract at the end of its term. A contract that received its initial renewal under MAHRA, will, at subsequent renewal, be renewed under any option that the contract is eligible for at the time of renewal. The Owner should follow procedures in place at time of renewal and submit the contract Renewal Request Form and OCAF Rent Adjustment Worksheet, Form HUD 9625, found at Attachment 3 of this guide to the PM/CA for processing.
- C. Rent Adjustments. Annual adjustments to contract rents that occur during the term of a multi-year Section 524 contract are called rent adjustments. These adjustments may be

by application of the published OCAF or, if applicable, by a budget-basis subject to HUD's approval.

- D. The RCS. A RCS that is submitted at initial renewal will be considered valid for five years. It establishes the market rent for renewals of staged contracts and can be used for the initial renewal of any expiring contracts that were not combined (see Section 2-5 below) that will expire during the five year life cycle of the RCS. In order to take advantage of this opportunity, the original RCS must include all of the Section 8 units in the project. The cost of this RCS is an eligible project expense.

Owner Options

Section 2-2

- A. Six Owner Options. At the time of the initial renewal, Owners may choose among any of the following renewal options for which the project is eligible:
1. Option One is Mark-Up-To-Market;
 2. Option Two is renewal with existing rents adjusted by OCAF or on the basis of a budget when rents under the expiring contract are at or below market;
 3. Option Three is referral to OAHP for processing because the contract has rents greater than market and is subject to an FHA-insured or HUD-held mortgage;
 4. Option Four is renewal of contracts for "exception" projects, which are exempt from debt-restructuring pursuant to 514(h) of MAHRA or are not an "eligible multifamily housing project" as defined in section 512(2) of MAHRA;
 5. Option Five is the renewal of contracts for Portfolio Reengineering Demonstration or Preservation projects; and
 6. Option Six is to opt-out of the Section 8 contract.

A. Owner submission. At least 120 days before contract expiration, the owner submits:

1. **Contract Renewal Request Form and OCAF Worksheet.** The Renewal Worksheet documents the owner's option selection and the OCAF-adjusted rent potential.
2. **Budget.** A Budget and rent schedule must be completed in accordance with the requirements of HUD Handbook 4350.1, Chapter 7, or the RHS approved budget, and Attachment 5.
3. **RCS.** For an FHA-insured or HUD-held project that is requesting renewal (as described in Section A.4. above), a RCS must demonstrate that the project's current rents are at or below comparable market rents.
4. If the primary financing or mortgage insurance is provided by a State government or a unit of general local government, and the financing involves mortgage insurance under the National Housing Act:
 1. Copies of the original financing documents and,
 2. The underlying statutory authority which the Owner believes conflicts with a mark-to-market restructuring plan, and
 3. Counsel's opinion as to the conflict.

B. Rent Determination. Based on the documentation submitted by the owner, the initial renewal rents shall be set at the lesser of:

1. **Current Rents + OCAF.** The current rent potential of the expiring Section 8 contract(s) adjusted by the published OCAF; or
2. **Budget.** The rent level required to meet operating expenses based on the format required by HUD Handbook 4350.1, Chapter 7 and Attachment 5, and submitted with the request for renewal.

If the project had a budget approved by HUD less than one year before processing the initial renewal, a copy of that budget may be submitted in lieu of a new budget, unless the Owner refinanced the project.

RENT ADJUSTMENTS FOR MULTI YEAR CONTRACTS

Section 6-3

For multi-year contracts, at least 120 days before the anniversary date of the contract, the owner should submit:

1. OCAF Worksheet, Attachment 3; or

2. A budget-based rent increase request. If requesting a budget based rent adjustment, the rent level required to meet operating expenses based on the format required by HUD Handbook 4350.1, Chapter 7 and Attachment 5, must be submitted with the request.

SUBSEQUENT RENEWALS

Section 6-4

- A. The “lesser of” test is required at subsequent renewal. (24 CFR §402.5(b)).
- B. Owner Submission. At least 120 days before expiration of the Section 8 contract, the owner should submit:
 1. The Contract Renewal Request Form and OCAF Worksheet; and
 2. A budget prepared in accordance with HUD Handbook 4350.1, Chapter 7.

PROCESSING INSTRUCTIONS

Section 6-5

- A. PM/CA Review. The PM should complete his/her review within 45 calendar days or whatever period is required to allow sufficient time for processing the contract renewal.
- B. The PM/CA checks to see:
 1. That the owner requested to renew under Option Four, *Renewal of Contract for Projects Exempted From OAHF*;
 2. If the Owner is eligible to renew the section 8 project-based contract under Option Four;
 3. That the Owner submitted all the required documentation. For example:
 - a. Contract Renewal Request Form and OCAF Worksheet;
 - b. A Rent Comparability Study, if applicable, prepared in accordance with Chapter Nine of this Guide;
 - c. A budget-based rent adjustment, prepared in accordance with Chapter Seven of HUD Handbook 4350.1.

4. If the Owner specified on the Cover Sheet of the Contract Renewal Request Form whether they wanted any multiple stages or contracts combined at this time. See instructions provided in Chapter Two of this Guide.
- C. Review the Owner's certification regarding suspension or debarment on the worksheet. If the Owner checked that they are not suspended or debarred, verify that information by using the www.epls.gov.
- D. If it is determined that the Owner is suspended or debarred, HUD will permit the Owner to renew the Section 8 contract if the project(s) in question were not the cause of the administrative actions against the Owner.
- E. Log the owner's request as indicated on Contract Renewal Request Form and any other relevant information in the REMS system.
- F. Prepare a 524(b) contract renewal.
 1. Renewals shall be at the lesser of the current rents adjusted by OCAF or the budget-based rent level.
 2. Rent Adjustments during term of multi year contracts shall be by:
 - a. Application of OCAF, or
 - b. Application of budget-based method.

Chapter Seven

Option Five *Renewal of Portfolio Reengineering Demonstration or Preservation Projects*

Eligibility

Section 7-1

Preservation Projects primarily consist of Section 236 and 221d3 BMIR projects whose Owners entered into long-term use agreements with HUD under the Preservation Program.

A Portfolio Reengineering Demonstration (“Demo”) Program Project is any project that completed the Demo Program, as evidenced by a recorded Demo Program Use Agreement. If the Owner entered into the Demo Program but did not execute and record a Demo Program Use Agreement, it is not eligible for renewal under Option Five.

Renewal of Portfolio Reengineering Demonstration Projects

Section 7-2

A. If the project has either a recorded Mortgage Restructuring Demo Program Use Agreement or a recorded Budget Based Without Mortgage Restructuring Demo Program Use Agreement:

1. The Section 8 contract cannot be forwarded to OAHP.
2. The owner is required to accept offers from the Department to renew the Section 8 contract throughout the term of the Demo Use Agreement. Owners therefore cannot opt-out of its contracts.

B. If the project went through the Demo Program but does not have a recorded Demo Program Use Agreement, it does not qualify as a Demo project. The Owner:

1. Cannot renew its contract under Option Five.

2. May renew its contract under any other Option it qualifies for.

Owner Submission for Demonstration Projects Under Option 5

Section 7-3

A. Initial Renewal: HUD is no longer conducting initial renewals under the Portfolio Reengineering Demonstration Program.

B. Subsequent renewal under Option 5:

The HAP contract for the subsequent renewal of a Demonstration Project may be a multiyear contract but may not exceed the number of years remaining at that time under the project's Demo Program Use Agreement.

C. Rent Adjustments

1. At the end of each 5-year period, the owner must obtain an RCS to permit HUD/CA to adjust project rents to that extent that they have risen above or fallen below market during such 5-year time period.

a. If the rents are below comparable market rents adjust the rents to equal the comparable market rents.

b. If the rents are above comparable market rents cut the rents to the comparable market rents.

2. Rents will be adjusted annually in years two through 5 by the published OCAF.

Processing Instructions for Demonstration Projects

Section 7-4

Portfolio Reengineering Demonstration Contract (OMHAR ineligible)

A. PM Review. The PM should complete their review within 45 calendar days or whatever period is required to allow sufficient time for contract renewal.

B. The PM/CA checks to see

1. That the owner selected to renew under Option Five, *Renewal of Portfolio Reengineering and Preservation Contracts*.
 2. If the Owner is eligible to renew the Section 8 project-based contract under Option Five.
- C. The PM/CA checks to see that the Owners has provided the required documentation, for example:
- At rent adjustment, the Owner must submit the OCAF worksheet, and at Subsequent renewal, the Owner must submit a new Contract Renewal Request Form.
- D. The PM/CA must check to see if the owner specified on the Cover sheet of the Contract Renewal Request Form whether or not they wanted any multiple stages or contracts combined at this time. (see instructions provided in Chapter Two of this Guide)
- E. Review the Owner's certification regarding suspension or debarment on the worksheet. If the Owner checked that they are not suspended or debarred, verify that information by using the www.epls.gov.
1. If it is determined that the Owner is suspended or debarred, HUD will permit the Owner to renew the Section 8 contract if the projects in question are adequately managed and maintained, and activities there were not the cause of the administrative actions against the Owner.
 2. If the Owner is suspended or debarred for actions involving the project, and who expressed their willingness to sell the project as part of the restructuring transaction, the certification will be acceptable.
 3. Where there are material violations and the enforcement process has progressed to the point that the field staff is in a position to terminate the existing contract or refuse to renew the contract, the PM should deny the request.
- F. Log the owner's request as indicated on the Contract Renewal Request Form and any other relevant information in the REMS system.
- G. Prepare a contract renewal using the Basic Renewal Contract for the appropriate term.